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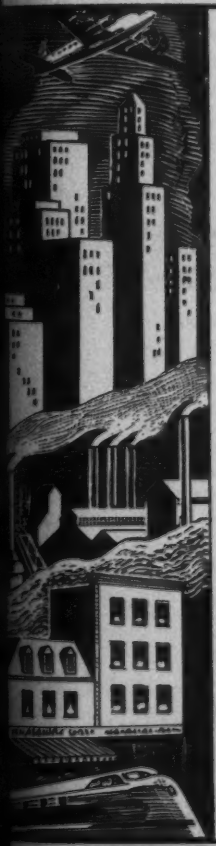
22, No. 5 APRIL—MAY 1958 Complete No. 414



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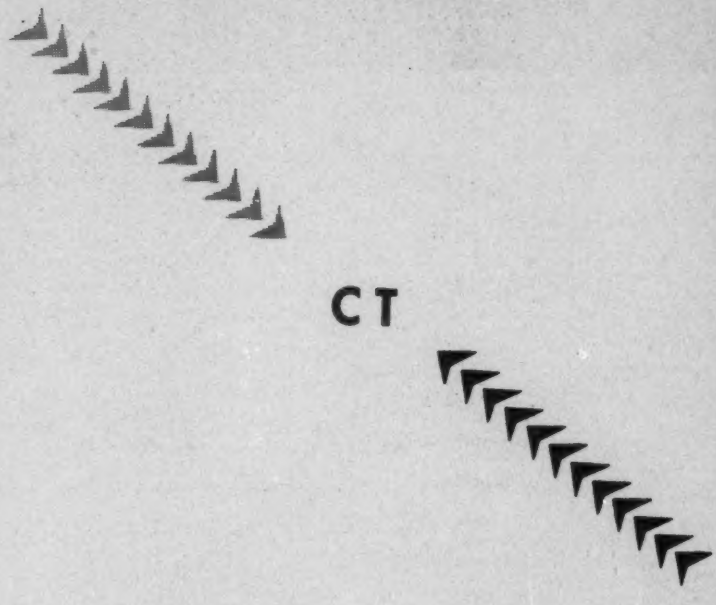

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APRIL—MAY 1958

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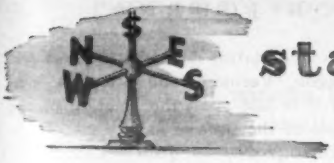

state tax trends

Foreign Corporations
The Sales Factor in State Income Tax Apportionment

IN the states where a foreign corporation bases its net income taxes upon an apportionment of its entire net income to the state, as distinguished from the separate accounting of income from the state, *one* of the factors used in apportioning the entire net income is "sales," or a like designation of receipts.

"Sales" is an expression employed in sixteen jurisdictions—Alabama, Arizona, District of Columbia, Idaho, Kentucky, Maryland, Minnesota, Mississippi, Montana, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina and Wisconsin, while "gross sales" has been adopted in Arkansas, California, Colorado, Iowa, Kansas, Missouri, Oklahoma, Tennessee and Vermont; "gross receipts" in Connecticut, Georgia, Massachusetts, Pennsylvania, Rhode Island, Utah and Virginia; and "net sales" in Louisiana.

In the states in which explanatory data is available specifically outlining the circumstances under which sales related to the taxing state are to be allocated to that state, this material may be broadly divided into four classifications, depending upon the emphasis placed by the statute or regulatory data:

In twenty states, the office or place of business to which a sale is related is emphasized as a determining feature. Generally, it may be said that sales linked to an office or place of business in the taxing state are to be assigned to that state. In this group are Connecticut, Idaho, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont and Wisconsin.[1]

There are nine jurisdictions in which the presence and solicitation of business by employees within them is recognized as sufficient activity to require the allocation of that business to the jurisdiction. These are Arizona, California, District of Columbia, Louisiana, Maryland, Oklahoma, Oregon, South Carolina, and Utah.[2]

In seven jurisdictions, the location of the customer within the state or delivery of goods to him there is re-

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[1] Connecticut STR (CCH State Tax Reporter), ¶ 10-835; Idaho STR, ¶ 11-066; Kansas STR, ¶ 11-511; Kentucky STR, ¶ 12-415; Louisiana STR, ¶ 11-580 (50%); Maryland STR, ¶ 11-526; Massachusetts STR, ¶ 10-340; Minnesota STR, ¶ 12-418; Mississippi STR, ¶ 11-509; New York STR, ¶ 5-805; North Dakota STR, ¶ 11-515; Oklahoma STR, ¶ 11-518; Oregon STR, ¶ 11-504; Pennsylvania STR, ¶ 10-805; Rhode Island STR, ¶ 10-810; South Carolina STR, ¶ 11-504; Tennessee STR, ¶ 10-318; Utah STR, ¶ 11-507; Vermont STR, ¶ 10-828A; Wisconsin STR, ¶ 11-522.

[2] Arizona STR, ¶ 12-406; California STR, ¶ 7-405; District of Columbia STR, ¶ 11-506; Louisiana STR, ¶ 11-580; Maryland STR, ¶ 11-526; Oklahoma STR, ¶ 11-518; Oregon STR, ¶ 11-504; South Carolina STR, ¶ 11-504; Utah STR, ¶ 11-507.

garded as sufficient to call for the allocation of such business to the taxing state. The District of Columbia, Georgia, Iowa, Louisiana, North Carolina, Oklahoma and Tennessee are in this classification.[3]

In five states, Alabama, New York, Oregon, Vermont and Virginia, emphasis is laid upon the location of the goods at the time of sale.[4]

domestic corporations

NEW JERSEY

President, failing after request, to file certificate of paid-in capital, held personally liable under statute for corporate debt owing to plaintiff.

N. J. S. A. 14:8-16, as amended, requires that upon payment of each installment of capital stock, and of every increase thereof, the president or a vice president and the secretary or treasurer shall make and file a sworn certificate within ten days after such payment in the office of the Secretary of State, stating the amount of the capital so paid and whether paid in cash or by the purchase of property. The section also provides that if any such officers neglect or refuse to do so for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted before the filing of such certificate.

Defendant was president of a corporation against which plaintiff had obtained a judgment. Plaintiff had requested him to file such a certificate of paid-in capital for the debtor corporation, by letter in which the defendant was described as the principal officer, although not specifically as president. He receipted for the letter personally, but did not comply with the request by filing the certificate of paid-in capital. The Superior Court of New Jersey, Chancery Division, ruled that the defendant was personally liable for the debt owed to the plaintiff.

Sylvania Electric Products, Inc. v. Fulmer et al., 136 A. 2d 51. Selwyn Schechter of Newark, for plaintiff. Louis Lando of Orange, for defendants.

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[3] District of Columbia STR, ¶ 11-506; Georgia STR, ¶ 11-517; Iowa STR, ¶ 12-432; Louisiana STR, ¶ 11-580 (50%); North Carolina STR, ¶ 11-509f; Oklahoma STR, ¶ 11-518; Tennessee STR, ¶ 10-317.

[4] Alabama STR, ¶ 11-502; New York STR, ¶ 5-805; Oregon STR, ¶ 11-504, Vermont STR, ¶¶ 10-828, 10-828A; Virginia STR, ¶ 11-503.

NEW YORK

Signing of minutes by incorporator, whose signature had been lacking, more than two years after holding of incorporators' first meeting, regarded as giving effect to events reflected in minutes.

Petitioner brought this proceeding under Section 25 of the General Corporation Law to annul the action of the stockholders in removing him as a director. By-laws permitting the removal of directors, with or without cause, were adopted by the three incorporators and original directors at a meeting held on December 8, 1953, attended by these three incorporators, under which the company operated until the contested meeting of August 28, 1956. The minutes of the 1953 meeting adopting the by-laws had been signed by only two of the incorporators. The third offered to sign those minutes at the August 28, 1956 meeting, but petitioner's attorney then stated that "the time to ratify and confirm is at the time when the minute was held." The Supreme Court, Special Term, Queens County, Part I, observed in this connection: "Obviously, this is not so. From their very nature, minutes of meetings record the events which took place at the meeting and are usually prepared and signed after the event. The time which elapses between the holding of the meeting and the preparation of the minutes may vary. Since the three incorporators have all either signed the minutes or sworn to the fact that they reflected accurately what took place, the petitioner's argument that no by-laws were ever adopted is without merit. It follows that respondents had the power to remove petitioner without cause."

The court granted respondents' motion to dismiss the petition on the merits.

Teperman v. Atcos Baths, Inc. et al, 163 N. Y. S. 2d 221. Isaac Anolic of New York City, for petitioner. Zaran Williamson of New York City, for Atcos Baths, Inc. Bendes, Stark & Amron (Zarah Williamson, of counsel), of New York City, for respondents Amron, Bendes and Williamson.

foreign corporations

ILLINOIS

Service on foreign corporation, effected in another state, set aside, where corporation conducted no business in Illinois and local activities were limited to attorney's incorporation of company and activities of business engineer and consultant.

The United States Court of Appeals, Seventh Circuit, said: "The ultimate contested issue here is whether or not the professional services performed in Chicago by plaintiffs under employment by defendant in New Orleans consti-

tute *the transaction of any business in Illinois* by defendant so as to make it amenable to suit in Illinois upon process served outside the state." Plaintiffs, one a business engineer and consultant and the other an Illinois attorney, effected, through activities based in Illinois, the incorporation of defendant company under the laws of Delaware for a Louisiana resident and registered its stock for public sale with the Securities and Exchange Commission at Washington, D. C., so that the new corporation could engage in the business of owning and operating its oil properties in Louisiana, Texas and Oklahoma. The suit was commenced in the Circuit Court of Cook County, Illinois, and removed to the United States District Court upon petition of defendant alleging a diversity of citizenship. The summons was issued by the clerk of the county court and was personally served on an officer or agent of defendant corporation at New Orleans, Louisiana, under the provisions of the Illinois Civil Practice Act, which provides for such service where a defendant has transacted business in Illinois.

The Court of Appeals observed: "Having completed their professional assignments to enable defendant to engage in business for the purposes defined in its charter, it does not appear in the record that plaintiffs did anything more. Likewise, there is no showing that defendant had any other 'contacts, ties or relations' with the State of Illinois." The court emphasized that there was no contention that the defendant ever engaged in the oil and gas business in Illinois, or transacted any business in this state in the furtherance of its corporate purposes. In affirming an order quashing the return of service of summons upon the defendant, the court remarked that "the fact that plaintiffs did most of their actual work in Chicago in accomplishing their assignments seems to us to be a slender thread on which to hang their claim for jurisdiction over defendant in Illinois."

Orton et al. v. Woods Oil and Gas Co. 249 F. 2d 198. Jerome F. Dixon of Chicago, for appellant. James J. Morrison of New Orleans, La., and Paul B. O'Flaherty of Chicago, for appellee.

MASSACHUSETTS

Maintenance of local sales office, investigation and adjustment of complaints, coupled with promotional work, held sufficient to sustain jurisdiction over foreign corporation.

The named defendant corporation moved to dismiss the action for lack of jurisdiction. The United States District Court, District of Massachusetts, found that the company had an active sales office in Boston which it had maintained for many years; that in addition to soliciting orders, one or more persons in this office, on authorization from the home office, investigated complaints, and possessed at least a modicum of authority to settle matters of minor nature on their own initiative. The court thought it fair to assume that with six permanent salesmen, promotional work was also carried on. In addition, the company's engineers consulted with a large manufacturer of package machinery with relation to adapting the machines it developed to use the defendant's products. That company, admittedly, did promotional work for the defendant. The federal court concluded that there was no question that the defendant was

doing business in the state, under Massachusetts state court decisions, for the purpose of being subject to the jurisdiction. The motion to dismiss the action was denied.

Zucco v. The Dobeckmun Company et al., 152 F. Supp. 369. Thomas L. Goggin of Springfield, for plaintiff. Thomas F. Maher of Boston, for defendants.

NEW BRUNSWICK

Unlicensed Quebec corporation held to have right to sue on assigned conditional sales contract in New Brunswick courts.

Plaintiff corporation, organized under the Quebec Companies Act, sued to recover the balance due on a conditional sales contract and promissory note signed by defendant, a resident of New Brunswick, and assigned to the plaintiff. The latter had no office in the Province of New Brunswick and carried on no business there. The note provided that installments were to be paid at the office of the plaintiff in Montreal, Province of Quebec. The defendant contended that plaintiff, as a Quebec company, was not empowered by legislative authority to bring the action in the New Brunswick courts, the company having neither sought nor received such power from the Province of New Brunswick.

The Saint John County Court, New Brunswick, concluded, after considering the evidence and reviewing the authorities, that the plaintiff company was legally entitled to bring action in the New Brunswick courts to enforce its rights under the contract in question.

Aetna Factors Corporation Ltd. v. Hachey, 8 D. L. R. (2d) 105. E. Neil McKelvey, for plaintiff. John T. Carvell, for defendant.

NEW YORK

Court takes jurisdiction in suit involving special meeting of stockholders of foreign corporation to the extent of granting injunction to restrain corporation, its directors and agents from interfering with the conduct of the special stockholders' meeting.

This was a motion to restrain defendants and their agents from interfering with the convening and holding of a special meeting of stockholders of the defendant Delaware corporation duly called for September 12, 1957. The plaintiffs were stockholders of defendant Loew's Incorporated. They were suing in behalf of themselves and all other stockholders of the corporation. The New York Supreme Court, Special Term, New York County, Part I, observed: "There can be no doubt that there are two factions on the board and that there is an internecine war going on for control of the corporation."

The court directed that a temporary injunction be issued restraining the defendant corporation, its directors and any and all of its agents from, in any

wise, interfering with, hindering or obstructing the convening and holding of the duly scheduled stockholders' meeting for September 12, 1957, or any of the business noticed to be transacted at that meeting. In doing so, the court stressed that its action would not constitute an interference with and regulation of the internal affairs and management of a foreign corporation, and that "all that the court is being called upon is to restrain dissidents from interfering with a duly called special stockholders' meeting." In the course of its opinion, the court noted: "In this state there are 7,966 resident owners of 3,328,295 shares of this defendant corporation or about 62.4% of all the stock of the corporation. An 18 story office building in this city is devoted to supplying space for officers and employees of this corporation. Most all directors' meetings are held in this city." It felt that it "should not decline to take jurisdiction in a matter of such basic right affecting the interests of so many of its citizens."

Starr et al. v. Tomlinson et al., 166 N. Y. S. 2d 629. Ernest E. L. Hammer and Harold A. Lerman of New York City, for plaintiffs. Phillips, Nizer, Benjamin & Krim (Louis Nizer and Walter S. Beck, of counsel), of New York City, for Loew's Incorporated. Nemser & Nemser and Nemerov & Shapiro (Norman S. Nemser, of counsel), of New York City, for intervening stockholders.

PENNSYLVANIA

Sales to local distributor and periodical visits of factory representative of seller to give servicing instruction on equipment sold by defendant seller to distributor, held sufficient to uphold service of process effected on state official.

In *Florio et al. v. Powder Power Tool Corp.*, 148 F. Supp. 843, (The Corporation Journal, August—September, 1957, page 12) the United States District Court, E. D., Pennsylvania, granted a motion to dismiss an action where service of process was made upon the Secretary of the Commonwealth under Section 1011, subd. B of the Pennsylvania Business Corporation Law of 1933, as amended. Sales to an exclusive local distributor and periodical visits of a factory representative of a seller to give servicing instruction on equipment sold by the defendant seller to the distributor were regarded as insufficient to uphold such service of process.

This judgment was reversed, upon appeal, by the United States Court of Appeals, Third Circuit, after an exhaustive examination of decisions of the Supreme Court of Pennsylvania and of the Supreme Court of the United States.

Florio et al. v. Powder Power Tool Corporation, 248 F. 2d 367. William M. Alper (Freedman, Landy & Lorry, on the brief), of Philadelphia, for appellants. Peter P. Liebert, 3rd, (John J. McDevitt, 3rd, on the brief), of Philadelphia, for appellee.

SOUTH CAROLINA

Foreign corporation entering into a contract with local independent dealer to sell its products held not doing business so as to be subject to suit.

Plaintiff South Carolina corporation purchased, through a dealer in South Carolina, ball-bearing Climax rolls manufactured by defendant Massachusetts corporation. Alleging that the rolls proved unusable, plaintiff instituted suit to recover the purchase price, by serving the Secretary of State as alleged statutory agent of the company.

The defendant had entered into a contract with its dealer in South Carolina who, in addition to selling the defendant's products, acted as commission representative for products manufactured by other concerns and sold products of its own manufacture. Under the contract, orders for defendant's products were solicited by the agents and employees of the dealer, but were placed directly by the purchasers with defendant by United States mail. Acknowledgment of the orders was sent to the dealer by defendant, and the dealer then prepared and sent an acknowledgment and confirming quotation to the purchaser. Shipment was made direct to the purchaser by the defendant. There was no evidence that defendant had any right to direct, supervise or control the activities of the dealer.

The United States District Court, W. D. South Carolina, holding that the defendant's dealer was an independent contractor, concluded that "merely because the defendant has had business solicited for it by another does not bring the defendant within the orbit of 'doing business' in that state." The case was dismissed for lack of jurisdiction of the defendant.

The Springs Cotton Mills v. Machinecraft, Inc.,* 156 F. Supp. 372. Williams & Parler, A. Z. F. Wood of Lancaster, for plaintiff. Wyche, Burgess & Wyche, of Greenville, for defendant.

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* The full text of this opinion is printed in the **State Tax Reporter**, South Carolina, page 10,053.

VIRGINIA

Corporation, shipping product to independent dealer, who assigned conditional sales contracts to corporation, ruled not doing business and empowered to maintain suit.

In *Rock-Ola Manufacturing Corporation v. Wertz et al.*, the United States District Court, Eastern District of Virginia, Richmond Division, ruled on October 9, 1956, (The Corporation Journal, February—March, 1957, page 309), that an unlicensed foreign corporation, shipping its product to a local representative, who assigned contracts, collateral to conditional sales of the product, to the company, was doing business so as to be barred from maintaining suit on a contract with the local representative.

Upon appeal, the United States Court of Appeals, Fourth Circuit, has reversed the District Court, finding that the local representative was not an agent of the foreign corporation for the transaction of the latter's business, but was, rather, "independently in business." It also con-

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on which, thanks to counsel's foresig

helpful information, reached the rig

SPECIAL REPORT AND TAX BULLETIN

from the State Report and Tax Notification Department of the

CT SYSTEM

THE CORPORATION TRUST COMPANY

120 BROADWAY, NEW YORK 5, N. Y.

RE: MISSOURI--AFFIDAVIT TO BE FILED BY FOREIGN CORPORATIONS WHEN REQUESTED BY SECRETARY OF STATE

We enclose forms sent by the Secretary of State of Missouri for the corporation in connection with which this Bulletin is sent, entitled, "Affidavit to be Filed by Foreign Corporation Upon Increase of the Proportion of its Stated Capital and Surplus as Represented by its Property Located and Business Transacted in Missouri as Shown on Balance Sheet for the Last Fiscal Year". Pursuant to statutory authority, the Secretary of State is sending such forms to foreign corporations authorized to do business in the state, indicating March 1, 1958 as the due date.

The statutory provision authorizing such requirement is as follows:

"It shall be the duty of every foreign corporation to cause an affidavit of its president or one of its vice-presidents to be filed when requested by the Secretary of State showing the proportion of the stated capital and surplus of said corporation which is represented by its property located and business transacted in this State and showing the value of the corporation's property located in this State at any time after its qualification or domestication so that it can be determined whether or not the proportion of its stated capital and surplus, which is represented by its property located and business transacted in this State, or the value of the corporation's property located in this State has been increased since its qualification or domestication, or since its last report. In case it is shown that the proportion of the stated capital and surplus of such corporation which is represented by its property located and business transacted in this State (which shall in no event be less than the value of the corporation's property located in this State) has increased since its qualification or domestication, or since its last report and the payment of qualification or domestication taxes or fees above the greatest amount upon which the domestication tax or fees have heretofore been paid, it shall be required to pay domestication taxes or fees on all such increases as is required with respect to an organization tax or fee of corporations organized under or subject to this Chapter when increasing its authorized shares."

"Every foreign corporation subject to this Chapter failing or refusing to * * * comply with any of the provisions of this section for a period

(Continued)

QUIREMENT

ple notice, together with additional
n's desk smoothly and surely.

The Secretary of State of Missouri has invoked the requirement contained in Section 351.595(2), Missouri Revised Statutes, 1949. It was last invoked in 1947, under an older statute. Every foreign corporation was asked to file an Affidavit (full title in the C T Notification Bulletin reproduced at the left) by March 1, 1958. Failure to comply within sixty days leaves the corporation open to loss of its license and loss of its right to maintain a suit in the state's courts.

Notice of the requirement, and forms, were mailed by the Secretary of State to each foreign corporation of record, in care of the corporation's registered agent in the state.

For corporations C T-represented in Missouri there were — thanks to their lawyers — no problems. The company's registered agent in the state *was there* to receive the notice and forms. C T attached a Special Notification Bulletin containing additional information about the requirement. Then off went the notice, forms and information to the desk of the right man — the man to whom, by prearranged plan, counsel had instructed all such communications should be sent. If counsel selected someone other than himself to receive the communication, a special "Counsel's Copy" of the Bulletin was also mailed to him so he would be fully informed, fully prepared to answer any questions his client might have about the requirement.

Smooth. Trouble-preventing. Sure. That is C T System. It reduces a once-in-ten-years' requirement to the same one-thing-at-a-time simplicity CT brings to regularly-recurring state report and tax requirements.

cluded that the corporation was not, under the circumstances, "doing business" in Virginia.

Rock-Ola Manufacturing Corporation v. Wertz et al., 249 F. 2d 813. John S. Davenport, III of Richmond (Claude D. Minor of Richmond, Louis M. Mantynband and Henry J. Shames of Chicago, Ill., Denny, Valentine & Davenport of Richmond, and Arvey, Hodes & Mantynband of Chicago, Ill., on the brief), for appellant. Wilbur M. Kessler of Richmond (John A. Cutchins and Cutchins, Wallinger, Wallace & Kessler of Richmond, on the brief), for appellees.

WISCONSIN

Foreign corporation with agent in state engaged in continuous solicitation of sales, gathering credit information and giving technical advice, ruled subject to service of process.

Defendant interpleaded foreign corporation appeared specially for the purpose of objecting to the jurisdiction of the trial court and moving to set aside process served upon it, upon the ground that it was an unlicensed foreign corporation not doing business in Wisconsin, and that its alleged agent who had been served was not an officer, director or managing agent. It appeared that the company had accounts all over the State of Wisconsin, to whom it sold equipment and propane gas. The person served had no authority to sign contracts, but carried a printed form of the contract used, explaining its provisions to customers and prospective customers. In the case of new customers he obtained a financial statement from the prospective customer which he forwarded to the company, so that it could pass on the credit standing. He also called on old customers sixty days before the expiration of their annual contracts and determined whether they wished to renew. He spent his full time for his employer and in 1955 traveled 35,000 miles in its business. It was also a part of his job to give technical advice.

The Supreme Court of Wisconsin reversed a judgment of the trial court which had held the service ineffective and which had ruled that the corporation was not doing business in the state. The higher court emphasized that the record disclosed that there was a continuous solicitation of sales, together with the gathering of credit information, the giving of technical advice, and the making of contracts in Wisconsin by the corporation, and concluded that these activities constituted doing business within the state. In doing so, the court applied the decision of the Supreme Court of the United States in *International Shoe Co. v. State of Washington*, 326 U. S. 310, 66 S. Ct. 154, (The Corporation Journal, January, 1946, page 69), where a foreign corporation employing salesmen engaged in furthering interstate commerce, was held subject to service of process.

Behling v. Wisconsin Hydro Electric Co. et al., 83 N. W. 2d 162. Stafford, Pfiffner & Stafford of Chippewa Falls, for appellant. Gwin & Fetzner of Hudson, for defendant-respondent. Wm. Bradford Smith of Madison, for plaintiff-respondent.

taxation

INDIANA

Gross income tax ruled applicable to receipts from sales of goods manufactured in Indiana for the Federal Government where title passed at seller's Indiana plants.

The appellee Delaware corporation, authorized to do business in Indiana, commenced suit to recover gross income and bonus taxes, paid under protest. It maintained offices and two manufacturing plants in St. Joseph County, Indiana. During the period in question the company received gross income from the United States Government and from its prime contractors on certain government contracts which provided for the manufacture by the company of certain articles needed for the Armed Forces. The appellee corporation contended that the receipts from all of these contracts were not subject to the gross income and bonus taxes of Indiana for the reason that the state was prohibited from taxing such transactions under the commerce clause of the Federal Constitution. The transactions involved articles ultimately to be moved out of the state after their manufacture at the company's two plants. During this process and at its termination, the Government and the prime contractors made their inspections. The shipping destinations on the bills-of lading in all instances were outside the geographical limits of Indiana. The shipments were, however, made f. o. b. at the company's Indiana plants, at which time and place title, possession and control passed to the Government.

The Indiana Supreme Court concluded that "the receipts resulted from transactions completely performed in Indiana. The performance was essentially local in character. The tax does not discriminate against interstate commerce nor does it interfere with the grant of power to Congress to regulate commerce among the several states." A judgment in favor of the company was reversed.

Department of Revenue et al. v. Bendix Aviation Corp.,* 143 N. E. 2d 91. Edwin K. Steers, Attorney General, Carl M. Franceschini, John Z. Kepler, Fred Steinhauer, Deputy Attorneys General, for appellant. Richey W. Whitesell, May, Beamer, Levy & Searer, George N. Beamer, Nathan Levy and James W. Oberfell of South Bend, for appellee. (*Appeal filed in the Supreme Court of the United States, January 3, 1958; Docket No. 701. Motion to dismiss granted and appeal dismissed for want of a substantial Federal question, March 3, 1958.*)

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* The full text of this opinion is printed in the **State Tax Reporter**, Indiana, page 10,041.

MICHIGAN

Supreme Court affirms state court judgment upholding property tax upon lessee of property leased from Federal Government, as a tax upon the privilege of using the property, measured by its full value.

In *United States et al. v. City of Detroit*, 77 N. W. 2d 79, (The Corporation Journal, February—March, 1957, page 313), the Michigan Supreme Court upheld a property tax imposed under Public Act 189 of 1953, which provides generally that when tax-exempt real property is used by a private party in a business conducted for profit, the private party is subject to taxation to the same extent as though he owned the property. In this case, the property used was an industrial plant, building and grounds owned by the United States and leased by the plaintiff corporation, which used it exclusively for manufacturing purposes in its business conducted for profit.

Upon appeal, the judgment upholding the tax has been affirmed by the Supreme Court of the United States, which emphasized that "so far as the United States is concerned as the owner of the exempt property used in this case it seems clear that there was no attempt to levy against its property or treasury." It also remarked that "in this Court the trend has been to reject immunizing these private parties from nondiscriminatory state taxes as a matter of constitutional law," and that "to hold that the tax imposed here on a private business violates the Government's constitutional tax immunity would improperly impair the taxing power of the State."

United States of America et al. v. City of Detroit,* Supreme Court of the United States, March 3, 1958; Docket No. 26.

* The full text of this opinion is printed in the CCH **U. S. Supreme Court Bulletin**, page 515.

PENNSYLVANIA

Foreign corporation franchise tax held not to be a property tax and ruled constitutional.

Appellant, a qualified New Jersey corporation, questioned the amount of a franchise tax imposed upon it, as confirmed by the Dauphin County Court It claimed the tax was a property tax and that therefore extraterritorial assets of the corporation were not to be included in arriving at the taxable valuation, and that the formula or method applicable under the Capital Stock Tax Act should have been applied to it, rather than that provided under the Franchise Tax Act.

The Supreme Court of Pennsylvania cited a number of its decisions in which it had held that the franchise tax was not a property tax, but that it was, as its name implies, "a tax levied for the privilege of doing business in the Commonwealth." The court also referred to the tax as an "excise tax," and that it was measured by the value of the property of the foreign corporation within the state. The court also found untenable, under decisions of the Supreme Court of the United States, a contention that the United States securities owned by appellant should not be included in the tax computation because of the general immunity which such securi-

ties enjoy from state and local taxation. The court concluded that the franchise tax was "constitutionally unassailable."

*Commonwealth of Pennsylvania v. National Biscuit Company,** 136 A. 2d 821. Roy J. Keefer of Harrisburg and Charles J. Biddle and Leslie M. Swope of Philadelphia, for appellant. George W. Keitel, Deputy Attorney General, and Thomas D. McBride, Attorney General, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter,** Pennsylvania, page 12,068.

TENNESSEE

Sale of an entire business ruled not subject to state sales tax.

"This cause," said the Supreme Court of Tennessee, "presents the question of whether the sale by a grocery chain of large quantities of store, warehouse and office fixtures and equipment, and automotive and truck equipment, which property was acquired and held by it for use in the course of its business, to another concern for use in the course of business, such sale being a part of and incidental to the sale of the entire business, constitutes a sale at retail of tangible personal property within the meaning of the Tennessee Sales Tax Law, so as to require the seller to include the proceeds therefrom in its report of its gross sales and pay a sales tax measured thereby. The Chancellor answered this question in the negative and this appeal resulted."

After an examination of pertinent sections of the statute and regulations, the court concluded: "In the present case we do not think it was the legislative intent to tax sales such as was had by the complainant and upon which the tax in question was levied. While the complainant was engaged in the business of selling tangible property, it was not engaged in the business of selling tangibles such as its fixtures and equipment. In support of this conclusion, it must be presumed that when the merchandise and equipment in question was acquired for complainant's own use, the law was complied with, and said personal property had, therefore, already been burdened with a sales tax."

Liberty Cash Grocers, Inc. v. Atkins, 304 S. W. 2d 633. George F. McCanless, Atty. General, Allison B. Humphreys, Sol. General, of Nashville, and Milton P. Rice, Asst. Atty. General, for appellant. Canale, Glanker, Montedonico, Boone & Loch and Charles H. Davis of Memphis, for appellee.

Provision for 2% gross receipts tax upon merchants employing trading stamps, while exempting certain others, held unconstitutional.

Complainant merchants sought a declaratory judgment with respect to Chapter 97, Public Acts of Tennessee of 1957, known as the Trading Stamp Act. This act provided for an increase in the privilege tax upon trading stamp companies and for the imposition of a privilege tax upon persons, firms and corporations using trading stamps, amounting to 2% of the gross receipts derived from the sale within Tennessee of goods and merchandise where stamps or similar devices were delivered to the purchaser. Exempted from this 2% tax were stamps

and similar devices redeemable at their face value in cash or in merchandise from the general stock of the merchant at regular retail prices at the option of the holder thereof. Also exempted were coupons and other similar devices issued by a manufacturer or packer which were redeemable either by the manufacturer or packer or their agents free of charge or for a reasonable handling or mailing charge, or for any product of the manufacturer or packer free of charge, or at less than the retail price thereof.

The Tennessee Supreme Court found no constitutional objection to the increase in the privilege tax upon trading stamp companies, affirming the decree of the Chancellor on this question. As to the 2% gross receipts tax upon those merchants using trading stamps who were not exempted from the tax, the court found the classification of those taxable and those not taxable to be arbitrary, capricious and unreasonable and in violation of the provisions of the State Constitution, Article XI, Section 8, as the Chancellor had.

*Logan's Supermarket, Inc. et al. v. Atkins,** 304 S. W. 2d 628. Larry Creson of Memphis; Edwin F. Hunt and Cecil Sims of Nashville and Robert W. Sweet of New York, N. Y., for appellees. George F. McCanless, Attorney General, Allison B. Humphreys, Solicitor General, and Milton P. Rice, Assistant Attorney General, of Nashville, for appellants.

* The full text of this opinion is printed in the **State Tax Reporter**, Tennessee, page 10,023.

state legislation

Canada — Bill 232, which received Royal Assent on December 20, 1957, reduced the corporation income taxes as a result of a change in the rate structure. The payment of 20% on the first $20,000 of taxable income was changed to allow the 20% payment on the first $25,000 of taxable income. Such income in excess of this amount continues taxable at a rate of 47%. These rates include a 2% additional Old Age Security Tax on all taxable income. Provision is made for pro-ration in the case of corporations which have a taxation year partly in 1957 and partly in 1958.

Massachusetts — Beginning in 1959, returns of information at the source will be due by June 1 of each year, instead of March 1, as a result of the enactment of House Bill 107, Laws of 1958.

South Carolina — Act 747 repeals the 3% alternative or minimum tax provisions of the corporation income tax, effective as to taxable periods beginning after December 31, 1957. This was applied to a base consisting of the entire net income, plus salaries and other compensation paid to all elective and appointed officers and to any stockholder owning in excess of 5% of the issued capital stock, after deducting $6,000 and any deficit for the year.

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

GEORGIA. Docket No. 763. *Stockham Valves & Fittings, Inc. v. Williams,* 101 S. E. 2d 197. (The Corporation Journal, December 1957—January 1958, page 55.) Corporation income tax—interstate commerce. **Petition for writ of certiorari filed, February 3, 1958. Certiorari granted, March 17, 1958.**

INDIANA. Docket No. 701. *Department of Revenue v. Bendix Aviation Corporation,* 143 N. E. 2d 91. (The Corporation Journal, April—May, 1958, page 93.) Gross income and bonus taxes—receipts from Government contracts. **Appeal filed, January 3, 1958. Motion to dismiss granted and appeal dismissed for want of a substantial Federal question, March 3, 1958.**

MICHIGAN. Docket No. 26. *United States et al. v. City of Detroit,* 77 N. W. 2d 79. (The Corporation Journal, February—March, 1957, page 313.) Property tax on lessee of property leased by Federal government. **Appeal filed, October 8, 1956. Probable jurisdiction noted, January 14, 1957. (77 S. Ct. 353.) Argued, November 14, 1957. Affirmed, March 3, 1958.** (See page 94.)

MINNESOTA. Docket No. 606. *Minnesota v. Northwestern States Portland Cement Co.,* 84 N. W. 2d 373. (The Corporation Journal, August—September, 1957, page 14.) Income tax—income received by corporation engaged only in interstate commerce. **Appeal filed, November 12, 1957. Probable jurisdiction noted, January 6, 1958.**

OHIO. Docket No. 588. *Youngstown Sheet & Tube Co. v. Bowers,* 166 O. S. 122, 140 N. E. 2d 313. (The Corporation Journal, February—March, 1958, page 72.) Property taxes—ores imported from foreign countries. **Appeal filed, October 30, 1957. Probable jurisdiction noted, January 6, 1958.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin.**

regulations and rulings

Arizona — A corporation not engaged in the business of selling cemetery lots, but owning a cemetery and selling lots through its officers and employees on a commission or salary basis, must comply with the licensing requirements regarding real estate brokers. No license is required, however, when a specific cemetery lot is sold by an individual owner not engaged in the business of selling cemetery property. (Opinion of the Attorney General, State Tax Reporter, Arizona, ¶ 200-021.)

Arkansas — The sales tax does not apply where an order was accepted in Arkansas but was directed to New York where the sale was consummated. Nor does the tax apply when an order was placed directly with an out-of-state company and shipped and invoiced from that point. (Opinion of the Attorney General, State Tax Reporter, Arkansas ¶ 65-029).

Manufactured goods trucked from a plant in Oklahoma to a plant in Arkansas for purposes of centralized distribution would be subject to local taxes, since their continuity of transit is broken. However, if there is a mere temporary cessation of movement with the goods coming to rest for no appreciable length of time, then the goods would remain in interstate commerce and no local taxes would be levied against them. (Opinion of the Attorney General, State Tax Reporter, Arkansas, ¶ 24-075.)

Florida — Generally, a foreign corporation may be said to be doing, transacting, carrying on or engaging in business within a state when it transacts some substantial part of its ordinary business therein. A single transaction, such as the purchase of a tract of land in the state, is not usually considered as doing business in this state, so long as nothing more is done in that connection. However, a foreign corporation owning rental real estate in this state is transacting business in this state when such property is managed and rented through real estate brokers. The foreign corporation must first obtain the same license, if any, as is required of a Florida corporation. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-158.)

New Mexico — Receipts from sales to, or for services performed under contract for, the United States or any of its agencies or instrumentalities are subject to the Emergency School (Gross Receipts or Sales) Tax, as long as those sales or services take place within New Mexico. (Opinion of the Attorney General, State Tax Reporter, New Mexico, ¶ 200-041.)

New York — The voting rights of stockholders cannot be based upon the amount of fees paid to or business done with the corporation during the preceding fiscal year. (Opinion of the Attorney General to the Secretary of State, New York Corporation Law Reporter, ¶ 11,621.)

A corporation licensed pursuant to Article 11-B of the Banking Law to engage in the business of a sales finance company is not thereby authorized to use the word "finance" as part of its corporate title. (Opinion of the Attorney General to the Secretary of State, New York Corporation Law Reporter, ¶ 11,622.)

some important matters

For April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Franchise Tax due April 1; payable April 30.

Arizona — Income Tax and Annual Report due on or before April 15.

Arkansas — Corporation Income Tax Return due on or before May 15.

California — Quarterly Retail Sales Tax due on or before April 30.

Colorado — Corporation Income Tax Return due on or before April 15.
Annual Report and License Tax due May 1.

Connecticut — Quarterly Retail Sales Tax due on or before April 30.

Delaware — Tentative or Estimated Corporation Income Tax Return and 50% of estimated tax due on or before April 1.—Domestic and Foreign Corporations deriving income from business activities carried on in Delaware and from property located in Delaware.

Annual Franchise Tax due after April and before July 1.—Domestic Corporations.

Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to residents of Delaware during 1957.

Withholding at source Returns due April 30.—Domestic and Foreign Corporations paying compensation to Delaware employees.

District of Columbia — Franchise (Income) Tax Return due April 15.

Annual Reports of companies incorporated, reincorporated or qualified under the Business Corporation Act of 1954, due April 15.

Georgia — Corporation Income Tax Return due April 15.

Idaho — Income Tax Return due on or before April 15.

Indiana — Quarterly Gross Income Tax due on or before April 30.

Iowa — Quarterly Retail Sales Tax due on or before April 30.
Corporation Income Tax Return due on or before April 30.

Kansas — Corporation Income Tax Return due April 15.

Kentucky — Income Tax and Corporation License Tax due on or before April 15.

Louisiana — Corporation Income Tax Return due on or before May 15.

Maryland — Annual Report (Personal Property Return) and Franchise Tax Report and Tax due on or before April 15.—Domestic Corporations.

Income Tax Return due April 15.

Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

Michigan —Annual Report and Franchise Tax due on or before May 15.

Mississippi — Corporation Income Tax Return due on or before April 15.

Missouri — Quarterly Retail Sales Tax due on or before April 15.

Income Tax Returns due on or before April 15.

Montana — Annual Statement due in April and May.—Foreign Corporations.

New Jersey — Franchise Tax Report and Tax due on or before April 15.

New Mexico — Corporation Income Tax Return due on or before April 15.

Franchise Tax due May 1.

New York — Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A Tax Law) and one-half of tax due May 15.—Business Corporations, Holding Companies and Investment Trusts.

North Carolina — Intangible Property Tax Return due April 15.

North Dakota — Income Tax Return due on or before April 15.

Quarterly Retail Sales Tax due on or before April 30.

Oregon — Corporation Excise (Income) Tax Return due on or before April 15.

Pennsylvania — Corporation Income Tax Return due on or before April 15.

Capital Stock Tax Report and Tax and Corporate Loans Report and Tax due on or before April 15.—Domestic Corporations.

Franchise Tax Report and Tax, Corporation Loans Tax Report and Excise Tax Report due on or before April 15.—Foreign Corporations.

Rhode Island — Business Corporation Tax due on or before May 1.

South Dakota — Quarterly Retail Sales Tax due on or before April 15.

Texas — Franchise Tax due May 1.

Utah — Income (Franchise) Tax Return due on or before April 15.

Quarterly Retail Sales Tax due on or before April 30.

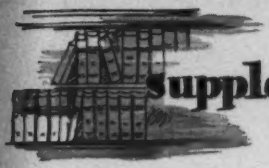
Vermont — Income (Franchise) Tax Return due on or before May 15.

Virginia — Corporation Income Tax Return due on or before April 15.

Corporation Income Tax due June 1.

West Virginia — License Tax Report due in April.—Foreign Corporations.

Quarterly Business and Occupation (Gross Sales) Tax due April 30.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

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120 Broadway, New York 5, N. Y.

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The CORPORATION JOURNAL

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